

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 26**

**RIFKIN & ASSOCIATES, LLP,  
d/b/a CABLEVISION COMMUNICATIONS<sup>1</sup>  
Employer**

**and**

**Case No. 26-RC-8069**

**INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS LOCAL 2113  
Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, <sup>2</sup>the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein<sup>3</sup>.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute units appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:<sup>4</sup>

Unit # 1

All technicians, installers and installer/sales employees employed at the Employer's Tullahoma, Shelbyville, McMinnville, Manchester, and Tracy City, Tennessee, locations, excluding all office clerical employees, professional employees, chief tech/lead techs, advertising sales representatives, guards and supervisors as defined in the Act.

Unit # 2

All customer service representatives and dispatcher employed at the Employer's Tullahoma, Shelbyville, McMinnville, Manchester, and Tracy City, Tennessee, locations, excluding all office clerical employees, professional employees, chief tech/lead techs, advertising sales representatives, guards and supervisors as defined in the Act.

**DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who

have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 2113.

### **LIST OF VOTERS**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the full names and address of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. The Regional Directors shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. **North Macon Health Care Facility**, 315 NLRB 359 (1994). In order to be timely filed, such list must be received by **March 12, 1999**, in the National Labor Relations Board, Region 26, 1407 Union Avenue, Suite 800, Memphis, Tennessee 38104-3627.

### **RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **April 19, 1996**.

**DATED** March 5, 1999, at Memphis, Tennessee.

/s/

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Gerard P. Fleischut, Director, Region 26  
National Labor Relations Board  
1407 Union Avenue, Suite 800  
Memphis, TN 38104-3627

#### CLASSIFICATION INDEX

393-6081-7075  
280-8990  
440-1760-7880  
440-3375-5000

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<sup>1</sup> The name of the Employer was corrected at the hearing.

<sup>2</sup> The Employer and the Petitioner filed briefs which have been duly considered.

<sup>3</sup> The parties stipulated that the Employer is licensed to do business in the state of Tennessee, with headquarters in Denver, Colorado, and facilities at Tullahoma, Shelbyville, McMinnville, Manchester, and Tracy City, where it provides cable television services to residential, commercial, and governmental customers. During the past 12 months, a representative period of time, the Employer derived revenues in excess of \$100,000 from these operations and also received goods and materials valued in excess of \$50,000, which were shipped to it directly from outside the state of Tennessee.

<sup>4</sup> The Employer is engaged in operating a cable television system located at Tullahoma, Shelbyville, McMinnville, Manchester, and Tracy City, Tennessee. The parties stipulated that the technicians and installers at all five locations are an appropriate unit for collective bargaining and that the customer service representatives and dispatcher at all five locations are an appropriate unit for collective bargaining. The parties also stipulated and agreed that the following were appropriately excluded from both units: all office clerical employees, professional employees, chief tech/lead techs, advertising sales representatives, guards and supervisors as defined in the Act. The parties further stipulated and agreed that the following individuals were supervisors within the meaning of 2(11) of the Act and were appropriately excluded from the Units: Rex Ferguson, plant manager; Brian Langhorn, plant supervisor; Cindi Brindley, customer operations manager; Stella O'Neal, customer sales and service supervisor; Deborah Armacher, information services supervisor; and Mike Mawby, sales manager

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The Union, contrary to the Employer, seeks to exclude the installer/sales employees from the unit of technicians and installers. In its brief the Union contended that the installer/sales employees should be included in a separate unit of their own. The Employer maintains that there are currently three installer/sales employees who have been trained and two installer/sales employees who have been offered employment and not yet been hired. The Employer contends that this position should be included in the unit with the technicians and installers. This is a new classification that was budgeted for last summer and started installing equipment in January of this year. These positions are currently working out of the Tullahoma location. The Employer intends to have one of these positions at each location.

All of the Employer's technicians and installation employees including the installation/sales employees wear the same type cap, shirt and jacket that is provided by the Employer. The record indicates that both types of installers receive the same fringe benefits. The hourly pay of the installers is \$2.00 to \$4.00 per hour more than the installer/sales employees. However, both groups are eligible for sales commissions for such things as upgrades in service, collection of non-payment by customer, conversion of an illegal connection, recovery of a converter box and converting a satellite dish customer to a paying customer of Cablevision. The installer/sales employees have more time allocated for sales, but both groups are paid for their sales of new or up graded service as well as all the categories listed in the preceding sentence.

Both groups are issued and work with the same type tools, beepers, safety equipment, hard hats, safety cones, and drive the Employer's vehicles. Both groups have virtually the same training eg. on the job training, NCTI (National Cable Television Institute) programs, working with experienced cable installers or techs and classroom work conducted by chief techs, supervisors or the plant manager. Supervisors or managers Ferguson, Riddle and Mawby work with both groups of installers on a daily basis. The majority of work done by the installers/sales employees is connection and disconnection of services. Both groups of installers do underground and overhead installations as well as audit type functions. The same standard of competency level is required for both groups to be released to work on the physical cable plant.

Work orders are printed out of the billing system and routed to the field. The supervisor or lead tech makes assignments based on the availability and quality standard goal of trying to get the equipment installed within two days. The Employer has a history of contracting out both the functions of installations and sales to outside contractors to bring down the work load.

The Union Petitioner herein makes much of the fact that the installer/sales employees do not mix with the technicians and installers at the Tullahoma location where they are trained. Also the Union Petitioner contends that the installer/sales employees take their trucks home regularly and the installers and technicians only take their trucks home when they are on call. The Employer explained that the installer/sales employees are being trained at nights and weekends as well as days and that is why they are taking their trucks home at night. Also the Employer stated that the installer/sales employees will be on call when their training is complete. The Union Petitioner contends that the installer/sales employees should be in their own unit because they do not have a community of interest with other unit employees.

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On the basis of the foregoing and the entire record before me I find that the installer/sales employees spend a majority of their time doing unit work and have a sufficient community of interest to be included in Unit # 1. Compare Continental Cablevision, 298 NLRB 973 (1990); Heron Communications, 308 NLRB 62 (1992).

There are approximately 21 employees in Unit #1 found appropriate herein. There are approximately 6 employees in Unit #2 found appropriate herein.